

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 698 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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JANAKBHAI HIMATLAL

Versus

A M C

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Appearance:

1. First Appeal No. 698 of 1979
MS MAYA N BHAVNANI for Petitioners
MR SN SHELAT for Respondent No. 1
MR AP MEDH for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/04/99

ORAL JUDGEMENT

This appeal under section 96 of the Civil Procedure Code is directed against the judgement and decree dated 22.1.1979 passed by the City Civil Court,

Ahmedabad, dismissing Civil Suit No.388 of 1974 wherein the appellants herein - original plaintiffs had challenged the notice issued by the respondent Ahmedabad Municipal Corporation under section 212(2) of the Bombay Provincial and Municipal Corporations Act, 1949 (hereinafter to be referred as the BPMC Act).

2 In the year 1943 road No.74 which passes from Relief Road towards Swami Narayan Temple was prescribed. The premises occupied by the plaintiffs being survey no.550 were affected by the roadline. The matter was then governed by the provisions of Section 118 of the Bombay Municipal Boroughs Act (hereinafter to be referred to as Boroughs Act). Section 118 of the said Act authorised the Chief Officer to prescribe the line on each side of every public street within the municipal borough. The said section further provided that at least one month previous to prescribing such line or such fresh line the Chief Officer shall give public notice of the proposal and usually publish said notice showing on the street or part of such street for which such line or fresh line is proposed to be prescribed. As per the aforesaid provisions, objections were invited by publishing the public advertisement in two newspapers on 26.7.1943. On the same day the Municipal Borough had also affixed the public notice at the place or part of the street for which such line was proposed to be prescribed. The objections were received from only two persons, namely, Kunjbihari Acharya and Sajjadansinh. The objections were placed before the then Administrator of Municipal Borough who granted his approval to the proposed roadline vide the Administrator's order dated 11.3.1944.

3 Before the notification changing the road line could be implemented, the Ahmedabad Municipal Corporation came to be incorporated under the provisions of the BPMC Act. On 2.8.1975 the Corporation issued notice to the owner of the property under section 212(1)(b) of the BPMC Act and its copy was also affixed at the public place. The objections were invited and the objections lodged by the owner on 11.11.1965 were placed before the Municipal Commissioner and the Standing Committee. On 22.2.1966 the Standing Committee considered the objections and resolved to acquire the land for widening the road and accordingly the Commissioner issued notices u/s 212 (2) of the BPMC Act. The Commissioner also issued notice u/s 388 of the BPMC Act. The plaintiffs had, therefore, filed Civil Suit No.1306 of 1966 for challenging the said notices.

However, the provisions of Section 212 of the BMC Act were held to be unconstitutional by a decision of this Court in the case of GIRDHARLAL GANPATRAM GANDHI V. THE MUNICIPAL CORPORATION OF CITY OF AHMEDABAD & ORS. 8 GLR page 500. In view of the said declaration the Corporation agreed not to execute those notices. Hence the suit was withdrawn on 29.7.1968. But the decision of this Court was challenged before the Hon'ble Supreme Court and vide the decision in the case of AHMEDABAD MUNICIPAL CORP. V. STATE OF GUJARAT AIR 1972 SC 1730 the aforesaid verdict of this Court was reversed and the provisions of Section 212 of the BMC Act were held to be intra vires the Constitution. The Corporation, therefore, served notices dated 8.10.1973 calling upon the plaintiffs to act upon the aforesaid notices dated 22.3.1966.

4 The plaintiffs, three in number, claiming to be the tenants of the suit property to be affected by the prescribed road line filed the present suit when they were served with the notices dated 8.10.1973 under section 212(2) of the BMC Act. The plaintiffs contended that the notices under section 212(2) of the BMC Act were illegal as the plaintiffs were persons interested in the suit properties affected by the prescribed road line and were therefore required to be served with the individual notices under section 212(1) of the BMC Act. The suit was resisted by the Corporation though its written statement narrating the facts in paras 2 and 3 hereinabove.

5 After considering the pleadings of the parties and oral as well as documentary evidence on record, the City Civil Court, Ahmedabad, dismissed the suit and held that though the plaintiffs were tenants of the suit property, they were not entitled to be served with individual notices under section 212(1) of the BMC Act. The Court also gave a finding that vide exh.21, 22 and 23 the plaintiffs were at least served with the copy of the notice served on the owner under section 212(1) of the BMC Act.

The City Civil Court also relied on the decision of this Court in Saiyed v. Ahmedabad Municipal Corporation reported in 18 GLR 549 and Dungar Lal v. State 17 GLR 1152 wherein Full Bench of this Court had taken a view that tenants of the property affected by a town planning scheme were not entitled to be served with the individual notices under Section 32 of the Bombay Town Planning Act, 1955, read with sub-rules (3) and (4) of Rule 21 of the Bombay Town Planning Rules, 1955.

Applying a similar analogy, the City Civil Court held that the plaintiffs were not entitled to be served with any individual notices under section 212 (1) of the BPMC Act.

6 When the present appeal was called out for hearing on 8.4.1999, the learned counsel for the appellant-plaintiff was not present. The matter was therefore, fixed for hearing on 15.4.1999. Even on that date none appeared for the appellants. Hence, the learned counsel for the respondent-corporation was requested to proceed with arguments. In view of the fact that the Court was inclined to dismiss the appeal, the Court suo motu adjourned hearing of the appeal for today. But, today also none has appeared for the appellants either in the first sitting or in the second sitting. The Court, therefore, proceeds to dispose of the appeal on merits.

7 The first ground urged in the memo of appeal is that no notice u/s 212(2) of the Act was served on the appellants. The contention appears to be factually incorrect because in the plaint itself the plaintiffs stated that the defendant - corporation had served notices dated 8.10.1973 u/s 212(2) of the BPMC Act calling upon the plaintiffs to act upon the notices dated 22.3.1966 which were also earlier issued by the Corporation u/s 212 (2) of the Act. It is true that earlier the Corporation had stated that they would not act upon the said notices dated 22.3.1966 because by that time this Court had declared the provisions of Section 212 of the BPMC Act as unconstitutional, but when the Hon'ble Supreme Court declared the said provisions as constitutional, the defendant-corporation did not commit any illegality in issuing the notices dated 8.7.1973 calling upon the plaintiffs to act upon the previous notices dated 22.3.1966.

8 The appellants have then contended in the appeal memo that compliance u/s 118(1) and Sec. 192 (3) of the Municipal Boroughs Act could not be said to be compliance with the provisions of Section 212(1) of the BPMC Act. The City Civil Court has given a clear finding that notice required to be given u/s 118 of the Municipal Boroughs Act was served in accordance with the provisions of said Act upon the occupants of the premises in the year 1943. Nothing is shown as to why the Corporation was required to serve fresh notices u/s 212 (1) of the BPMC Act even after complying with the provisions of Section 118 of the Municipal Boroughs Act.

9 Assuming that it was necessary for the Municipal Corporation to again comply with the provisions of Section 212 of the BMC Act, the question would arise whether the tenants of the suit premises were required to be served with the individual notice u/s 212(1) of the BMC Act. For the purpose of negating the contention to the above effect raised on behalf of the plaintiffs, the trial court relied upon the decision of Full Bench of this Court in the case of *Dungar Lal (supra)*. It is true that the said decision came to be reversed by the Apex Court in the case of *Jaswant Singh Mathur Singh v/s AMC* reported in AIR 1991 SC 2130 and it has been held therein that every owner or tenant or a sub-tenant in possession of a land which is affected by a town planning scheme on the date when the town planning scheme is notified in the Official Gazette is entitled to a notice and an opportunity of being heard under sub-rules (3) and (4) of Rule 21 of the Bombay Town Planning Rules 1955 because, the tenants/sub-tenants in possession of the property on the aforesaid date would fall within the expression "persons interested". This decision may prima facie seem to be in favour of the plaintiffs as the Supreme Court overruled the view of this Court giving a narrow meaning to the expression "persons interested". Similarly, in the case of *State of Gujarat v/s Shivshankar G Mehta* 1984 (1) GLR 510 a Division Bench of this Court took the view that the expression "persons interested" in Section 212 of the BMC Act would cover tenants or other interests as can be reasonably identified with reference to public records like city survey records or records with the municipality/corporation in the form of assessment books and such persons interested would be required to be served u/s 212 of the Act. The said judgement may also seem to be prima facie in favour of the plaintiffs.

10 However, Mr Suresh C. Shah, learned counsel for the respondent-corporation, has submitted that in the case of *Jaswant Singh (supra)* the Apex Court has held that the person interested must be in possession of the property on the crucial date i.e. when the Town Planning Scheme was notified in the Official Gazette and the owner/ tenant /sub tenant on that day alone would be entitled to the notice and opportunity of hearing. Mr Shah has submitted that in the instant case the notification of the administrator was published in the year 1943-44 and admittedly none of the plaintiffs was in possession of the suit premises in the year 1943-44 as according to them they had obtained the possession of the suit premises sometime in the year 1958 or thereabout. In any case, none of them was in possession of the suit premises in the year 1943-44. Hence, the plaintiffs are

not entitled to to get any benefit of the principle laid down in the case of Jaswant Singh (supra) which was rendered under the Bombay Town Planning Act, 1955.

11 The learned counsel for the respondent Corporation has submitted in the alternative that in any case, service of notice u/s 212(1) does not necessarily mean service on the tenant of a notice addressed to the tenant himself. It was vehemently submitted that in view of the finding given by the trial Court in para 13 of the judgement that a copy of the notice u/s 212(1) of the Act having been served upon all the three plaintiffs there was sufficient service of notice on the persons interested and that if the plaintiffs had any objection the plaintiffs could have lodged their objections, sufficient opportunity was given to the plaintiffs but the same was not availed of. To buttress the said contention, the learned counsel has relied on the following observations made by the Division Bench in para 7 in the case of State of Gujarat v. Shivshankar 25(1) GLR 520 :-

"... Without laying down any law, but by way of only a suggestion, we would say that if the Municipality in such cases affixes a notice on the conspicuous part of the property to be dealt with under Sec.212 and 213 of the Act, it may in all probability serve the purpose, though it is always desirable to locate the interests as can be located reasonably and by reasonable search and serve them with notices."

12 There is considerable substance in the submissions made by the learned counsel for the respondent-corporation. Even proceeding on the basis that the plaintiffs were required to be served with the fresh notices u/s 212(1) of the BPMC Act even though they were not in occupation of the suit premises in the year 1943 when the then Municipal Borough had prescribed the road line, the plaintiffs were given sufficient notice and opportunity by serving them with copy of the notice served upon the owner of the premises u/s 212(1) of the BPMC Act.

13 In view of the above discussion, there is no merit in this appeal. However, considering the fact that the appellants-plaintiffs have been in possession of the suit shops for the last about four decades, it appears to the Court that the appellants may be given some time to vacate the suit premises.

Mr Shah learned counsel for the Corporation submits that the appellants-plaintiffs had sufficient time in terms of decades and the Corporation needs to widen the road at the earliest.

In the facts and circumstances of the case, the appellants-plaintiffs are given time up to 31.12.1999 to handover the vacant possession of the suit premises to the respondent - Corporation in order to enable the respondent - Corporation to widen the road in accordance with the sanctioned scheme.

14 In the result, the appeal is dismissed. However, the respondent - Corporation shall not enforce the notice under Section 212(2) of BPMC Act in respect of the suit premises till 31.12.1999.

The Registry shall send a copy of this judgement to each of the appellants by registered post A.D. so as to reach them latest by 31.7.1999.

(mohd)